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NO. 80-1714

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

ROBERT G. BRITTON, Commissioner,
Alabama Department of Corrections, and
JOSEPH OLIVER, Warden, Holman Prison,

Petitioners

v.

JOHN LOUIS EVANS, III,

Respondent

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF CERTIORARI

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On May 9, 1981, the Alabama Supreme Court issued its opinion in Ritter v. State, ___ So. 2d ___ No. 79-798 (Ala. 1981), on remand from this Court. The Ritter case is discussed on pp. 58-61 of

our Petition for a Writ of Certiorari, and on pp. 1-2 of Respondent's Memorandum Opposing Certiorari. (A copy of the Alabama Supreme Court's May 9, 1981 opinion in Ritter is attached as Appendix A to that memorandum.)

Petitioners filed a petition for a rehearing in Ritter requesting the Alabama Supreme Court to clarify whether its decision in that case was based on federal or state law grounds. On June 12, 1981, the Alabama Supreme Court extended its original opinion in Ritter to clarify the grounds of that decision. (A copy of that June 12, 1980 extension has already been submitted to this Court by Respondents.)

The Alabama Supreme Court's June 12, 1981 extension of opinion in Ritter makes it clear that that decision was based solely on federal constitutional grounds and is therefore no impediment to certiorari in this case. Explaining its

decision in Ritter, the five-member majority states that:

> We believe this result is compelled by the decision of the Supreme Court of the United States in Beck and is consistent with the interpretation of that decision reached by the Court of Appeals for the Fifth Circuit in Evans v. Britton, ___ F. 2d ___ [March 19, 1981] (1981), which involved Ritter's partner in this crime.

Ritter v. State, supra, slip op. at 2 (majority opinion).

Likewise, the special concurring opinion of Justice Maddox, joined by two other justices, states that:

> I concur in this Court's action, on application for rehearing, to extend its prior opinion to indicate that its reversal of Ritter's conviction was grounded on this Court's interpretation of what the Supreme Court of the United States mandated in Beck v. Alabama, ___ U.S. ___ (1980). ...

Ritter v. State, supra, slip op. at 10 (special concurring opinion of Maddox, J.).

The issue remains a federal constitutional one. The fact that the Alabama Supreme Court has joined the Fifth Circuit in misinterpreting this Court's opinion in Beck v. Alabama, 447 U.S. 625 (1980), in no way lessens the need for this Court to review the matter. Indeed, the Alabama Supreme Court's Ritter decision makes certiorari in this case even more imperative, because this Court is now the only one which can correct the rampant misinterpretation of its Beck decision.

The federal constitutional issues are clearly drawn by the facts in the case of this respondent and his codefendant Ritter. The factual clarity is emphasized by the following portion of a separate opinion joined by the three members of the Alabama Supreme Court in Ritter:

> Aided by the Court of Criminal Appeals' summary of the evidence in Evans and Ritter v.

State, 361 So. 2d 654, 656-661 (Ala. 1977), and Ritter v. State, 375 So. 2d 266, 267 (Ala. 1978), and by this Court's opinion, after return of the case from remand (Ritter v. State, 375 So. 2d 270, 273 (Ala. 1978), I have again made an independent review of the entire record in a painstaking search for the slightest hint that Ritter was restricted, or otherwise influenced, in the conduct of his defense by the omnipresence of the statutory edict that the jury either sentence him to die or set him free. I find none.

Indeed, to the minutest detail, the State's proof of each and every element of the capital offense is verified and amplified by Ritter's own testimony. In addition to pleading guilty of the capital crime as charged, he took the witness stand--against advice of counsel and following the trial court's thorough admonition as to his constitutional rights--and recounted in great detail his and his companion's trail of crime leading up to and including the murder of the pawnshop proprietor during a planned armed robbery of the victim, agreeing in advance to kill the robbery victim if necessary.

The posture of this record affirmatively precludes any reasonable hypotheses other than that of Defendant's guilt of the capital crime as charged in the

> indictment. Where, as here, the voluntary testimony of a mentally competent defendant affirmatively eliminates any possible inference which would support a finding of guilty of a noncapital lesser included offense, we are constrained to hold that the unconstitutional provision excised by Beck visited no impermissible restraint upon the Defendant in the conduct of his defense, including his right to actively contest the charges against him.

Ritter v. State, supra, slip op. at 7-8 (opinion of Jones, J., concurred in by Maddox and Adams, J.J.) (on rehearing).

The federal constitutional issues are clearly drawn, they are important, and it is now clear that there are no state law questions involved. This Court should grant certiorari.

Respectfully submitted,

/s/ Charles A. Graddick
CHARLES A. GRADDICK
ATTORNEY GENERAL OF
ALABAMA

/s/ Edward E. Carnes
EDWARD E. CARNES
ASSISTANT ATTORNEY
GENERAL OF ALABAMA

CERTIFICATE OF SERVICE

I, Edward E. Carnes, a member of the Bar of the Supreme Court of the United States, do hereby certify that on this the 15th day of June, 1981, I did serve a copy of this Supplemental Memorandum in Support of Certiorari on Respondent, by placing in the United States Mail, first-class postage prepaid, three copies properly addressed to each of the following counsel of record for Respondent:

Honorable John L. Carroll
Honorable Dennis N. Balske
1001 South Hull Street
Montgomery, Alabama 36104

Honorable Steven A. Reiss
2555 N. Street N.W.
Washington, D.C. 20037

I further certify that I have served all parties required to be served.

/s/ Edward E. Carnes
EDWARD E. CARNES
ASSISTANT ATTORNEY
GENERAL OF ALABAMA